

A

D I G E S T

OF THE

L A W S O F N E W J E R S E Y .

BY LUCIUS Q. C. ELMER.

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FOURTH EDITION,

CONTAINING ALL THE LAWS OF GENERAL APPLICATION, NOW IN FORCE,

FROM 1709 TO 1868 INCLUSIVE,

WITH THE RULES AND DECISIONS OF THE COURTS.

BY JOHN T. NIXON.

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Published by Authority of the Legislature.



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*An Act relative to publishing the Statute Laws. Approved April 16, 1868.*

**1. It may be set forth on the title page of Nixon's Digest of the Laws of New Jersey, that the Statute Laws of this State are published therein under the authority of the Legislature.**

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Entered according to the Act of Congress, in the year one thousand  
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**JOHN T. NIXON,**

In the Clerk's Office of the District Court of the District of New Jersey.

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least ten days before the returning thereof, or left at his residence; and that any of the members of the said society may appear and defend the said suit: and if in the course of the said proceedings, it should become expedient to ascertain the number of members of the said society, connected with the said parties respectively, any member thereof shall be under the age of twenty-one years, such infant shall be counted with the party to which his or her father belongs, if he is living, and if not, to that which his or her mother, if living, belongs, and if she also be dead, with the party to which his or her guardian belongs.

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[See *Animals*.]

An Act for the preservation of deer and other game, and to prevent trespassing with guns.  
Approved April 16, 1846. (R. S. 12.)

1. If any person or persons shall carry any gun on any land not his own, and for which the owner pays taxes, or is in his lawful possession, unless he hath license or permission in writing from the owner or owners or legal possessor, every such person so offending, and convicted thereof, either upon the view of any justice of the peace within this state, or by the oath or affirmation of one or more witnesses, before any justice of the peace of either of the counties, cities, or towns corporate of this state, in which the offender or offenders may be taken or reside, he or they shall, for every such offence, forfeit and pay to the owner of the soil or his tenant in possession the sum of five dollars, with costs of suit; which forfeiture shall and may be sued for and recovered by the owner of the soil or tenant in possession before any justice of the peace in this state, for the use of such owner or tenant in possession. (See 18.)

2. If any person shall hunt or watch for deer with a gun, or set in any dog or dogs to drive deer or any other game, on any lands not his own, and for which the owner or possessor pays taxes, or is in his lawful possession, unless he hath license or permission in writing from such owner or owners, or legal possessor, every such person so offending, and being convicted thereof in manner aforesaid, shall for every such offence forfeit and pay to the owner of the soil or tenant in possession \*the sum of five dollars, with costs of suit: *Provided*, that \*311] nothing herein contained shall be construed to prevent any person carrying a gun upon the highway in this state.

3. If the person or persons offending against this act be non-residents of this state, he or they shall forfeit and pay for every such offence fifteen dollars, and shall forfeit his or their gun or guns to any person or persons who shall inform and prosecute the same to effect, before any justice of the peace in any county of this state, wherein the offender or offenders may be taken or apprehended.

4. *And*, for the better and more effectual conviction of offenders against this act, *be it enacted*, That any and every person or persons in whose custody shall be found, or who shall expose to sale, any green deer skins or fresh venison killed at any time after the first day of January, and before the first day of September aforesaid, and shall be thereof convicted by the oath or affirmation of one or more credible witnesses, shall be deemed guilty of offending against this act, and be subjected to the penalties of killing deer out of season.

5. If any person or persons within this state shall set any trap, or other device whatsoever, larger than what is usually and commonly set for foxes and muskrats,

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such person setting such trap or other device shall pay the sum of fifteen dollars, and forfeit the trap or other device, and shall also be liable to make good all damages any person shall sustain by setting such trap or other device; and the owner of such trap or other device, or person to whom it was lent, shall be esteemed the setter thereof, unless it shall be proved on oath or affirmation what other person set the same, or that such trap or other device was lost by said owner or person to whom it was lent, and absolutely out of his power; and that the said trap or other device shall be broken and destroyed in the view and presence of the justice of the peace before whom they are brought.

6. If any person or persons within this state shall set any loaded gun in such manner as that the same shall be intended to go off or discharge itself, or be discharged by any string, rope, or other contrivance, such person or persons shall forfeit and pay the sum of twenty dollars, to be recovered by action of debt by any person who shall sue for the same, and on non-payment thereof, shall be committed to the common jail of the county for six months.

7. Nothing in this law shall be construed to extend to restrain the owners of parks or of tame deer from killing, hunting, or driving their own deer.

8. If any person or persons within this state shall watch with a gun on any unenclosed land within two hundred yards of any road or path, in the night-time, whether the said road is laid out by law or not, or shall stand or station him or themselves upon or within two hundred yards of any road as aforesaid, for shooting at deer driven by dogs, he or they so offending shall on conviction forfeit and pay the sum of fifteen dollars for every such offence, to be recovered by action of debt as aforesaid, and pay all damages.

9. If any person or persons shall kill, destroy, hunt, or take any doe, buck, fawn, or any sort of deer whatsoever, at any other time or season, except only between the [last day of August and the second day of January] yearly and every year, he, she, or they so offending shall forfeit and pay the sum of twenty dollars for each and every such offence, to be sued for and recovered with costs of suit, in an action of debt, by any person, before any justice of the peace of the county wherein such offence shall have been committed; one half of the forfeit money shall be for the benefit of the person prosecuting for the same, and the remainder paid to the collector of the township wherein the offence shall have been committed, for the use of the township. (Altered to last day of September, and second day of December, by supplement of 1848, Pam. 145.)

10. If any person or persons shall kill, destroy, or take any partridge, moorfowl, grouse, quail, or rabbit, except only between the first day of November and the tenth day of January, yearly and every year, or any woodcock, except only between the fifth day of July and the first of January, yearly and every year, he, she, or they so offending shall forfeit and pay, for every partridge, moorfowl, grouse, quail, rabbit, or woodcock, one dollar for each and every offence, to be \*sued for and recovered in an action of debt, with costs [\*312 of suit, by any person who shall sue for the same; and any person in whose hands or custody any partridge, moorfowl, grouse, quail, rabbit, or woodcock shall be found that shall have been killed contrary to the provisions of this act, shall be deemed, taken, and adjudged to be the killer and destroyer of such game, and liable to the penalties aforesaid: *Provided nevertheless*, that no such person or persons shall be prohibited from gunning on his or their own land. (See 15.)

11. If any person or persons not resident in this state shall offend against any of the provisions of the first section of this act, it shall and may be lawful for the owner or owners of the said lands, or the possessor or possessors thereof, to apprehend any and every such person or persons so offending, and take him or them before a magistrate as soon as conveniently may be, in order that he or they may be dealt with according to law; and every such person who may perform this service shall be entitled to the same assistance and protection, and subject



to the same restrictions and liabilities, as a constable would be on the same occasion.

Supplement. February 14, 1852. (Pam. 38.)

12. SEC. 1. It shall not be lawful for any person, hunting or gunning after geese, ducks, brant, and for that purpose using stools or decoy geese, ducks, or brant, to place the boat, sneak-box, or other floating vessel in which he lies in wait to kill the said geese, ducks, and brant, at a distance more than three rods from ice, or from marsh, or meadow bank, or heaped sea-weed, or sand-bar not covered with water at ordinary high tide.

13. SEC. 2. It shall not be lawful for any person, with intent to capture or kill geese, ducks, or brant, in and about the waters aforesaid, to hunt after or pursue them with a light at night.

14. SEC. 3. Every person offending against the provisions of this act shall, for each offence, forfeit and pay the sum of fifteen dollars, to be sued for and recovered, with costs, in an action of debt before any justice of the peace in this state, by any person who shall sue for the same.

A Supplement. Approved March 16, 1859. (Pam. 465.)

15. Hereafter if any person or persons shall kill, destroy, or take any partridge, moorfowl, grouse, quail or rabbit, except only between the first day of November and the first day of January yearly and every year, or any woodcock, except only between the first day of September and the first day of January, yearly and every year, he, she, or they, so offending, shall forfeit and pay for every partridge, moorfowl, grouse, quail, rabbit, or woodcock, the sum of five dollars, for each and every offence, to be sued for and recovered in an action of debt, with costs of suit, by any person who shall sue for the same, and on non-payment thereof shall be committed to the common jail of the county, for any period not exceeding sixty days, and until the fine and costs are paid; and any person in whose hands or custody any partridge, moorfowl, grouse, quail, rabbit, or woodcock shall be found, that shall have been killed contrary to the provisions of this act, shall be deemed, taken and adjudged to be the killer and destroyer of said game, and liable to the penalties aforesaid. (See 17.)

A Supplement. Approved March 23, 1859. (Pam. 636.)

16. From and after the passage of this act, it shall not be lawful for any person or persons to kill, capture or hunt in or about the waters of Barnegat bay, or Manasquan river, any geese, brant, or ducks at night, that is to say, after sunset or before daylight, nor shall it be lawful at any time to kill, capture or hunt any geese, brant, or ducks in or about the waters aforesaid, except only between the fifteenth day of October and the fifteenth day of April, yearly and every year hereafter.

A Supplement. Approved February 28, 1861.

17. Hereafter if any person or persons shall kill, destroy or take any woodcock, except only between the fifth day of July and the first day of January, yearly and every year, he, she, or they so offending shall forfeit and pay for every woodcock, the sum of five dollars for each and every offence, to be sued for and recovered in an action of debt, with costs of suit, by any person who shall sue for the same, and on non-payment thereof, shall be committed to the common jail of the county for any period not exceeding sixty days, and until the fine and costs are paid, and any person in whose hands or custody any woodcock shall be found, that shall have been killed contrary to the provisions of this act shall be deemed, taken and adjudged to be the killer and destroyer of said game, and liable to the penalties aforesaid.

2. All acts and parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed.

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An Act to prevent wilful trespasses upon lands. Approved February 17, 1867. (Pam. 16.)

18. If any person or persons shall unlawfully enter upon any lands not his own, after having been forbidden so to do by the owner or legal possessor of such lands, he shall forfeit and pay for each offence to the owner of said lands or his or her tenant in possession, the sum of three dollars, to be sued for and recovered, with costs, in an action of debt, before any justice of the peace in this state.

19. By act approved March 22, 1867, Pam. 324, partridge, moorfowl, grouse, quail, or rabbit, are not to be killed or taken in the county of Middlesex, at any time except between the first day of December and the first day of February; the act not to prevent any owner of real property from killing game on his own premises.

Supplement to the act entitled "An act for the preservation of deer and other game, and to prevent trespassing with guns," approved April sixteenth, eighteen hundred and forty-six. Approved March 26, 1866. (Pam. 681.)

20. SEC. 1. Hereafter no person shall at any time within five years from the passage of this act, kill, or take, or destroy any pinnated grouse, commonly called prairie fowl, within this state, under a penalty of fifty dollars for each and every pinnated grouse so killed, taken or destroyed.

21. SEC. 2. Hereafter no person shall, within this state, kill or have in his or her possession, or expose for sale any woodcock killed in this state between the first day of January and the fourth day of July, in each year, or any ruffed grouse, commonly called partridge, or any quail, sometimes called Virginia partridge, or any rabbit killed in this state between the first day of January and the first day of November in each year, under a penalty of fifteen dollars for each and every woodcock, partridge, quail or rabbit so killed or had in possession, or exposed for sale.

22. SEC. 3. No person shall at any time, or in any place within this state, take with any trap or snare any quail or ruffed grouse, or partridge, or rabbit, under a penalty of ten dollars for each and every ruffed grouse, or partridge, or quail so trapped or snared, except the same be so taken with the intent to be kept alive, and be so kept alive and set at liberty, in the month of April following the taking thereof.

23. SEC. 4. No person hereafter shall at any time, with intent so to do, catch any speckled brook trout, or speckled river trout, with any device, save only with a hook and line, and no person shall in any way catch any such trout, or have any such trout in his or her possession, save only during the months of March, April, May, June, July and August, under a penalty of five dollars for each and every trout so caught or had in his or her possession; but in any prosecution under this section it shall be deemed a defence, that the trout so taken was for the purpose of stocking other waters therewith within this state.

24. SEC. 5. Hereafter any person who shall hunt with a gun, or with a dog and gun, or with any kind of fire-arm or weapon, or shall in any way kill, take or destroy with any trap, snare, or other device whatsoever, any bird or animal whatever, on the Sabbath day, commonly called Sunday, except those who observe the seventh day of the week as the Sabbath gunning upon their own lands, shall be liable to a penalty of twenty-five dollars for each and every offence, one-half of said penalty to be paid to the complainant, and the remainder to be paid to the overseer of the poor of the township where the offence was committed, for the use of the poor of said township. (See 29.)

25. SEC. 6. All penalties imposed under the provisions of this act may be recovered in an action of debt, with costs of suit, by any person or persons in his or their own names, before any justice of the peace in the county where the offence was committed, or where the defendant resides, or is found, and any justice of the peace is hereby authorized and directed, upon receiving sufficient proof, by affidavit, of the violation of any of the provisions of this act, by any person being temporarily within his jurisdiction, but not residing therein, or who is likely

to evade judgment by removal therefrom, or by any person whose name and residence are unknown, to issue his warrant and have such offender arrested and tried within twenty-four hours for such offence, or committed, or held to bail to answer the charge against him, in case such offender shall require or demand a reasonable delay for such trial; and any justice of the peace shall, upon proof of probable cause to believe in the concealment of any game or fish mentioned in this act, during any of the prohibited period, issue his warrant and cause search to be made at any hour, in any house, market, store, shop, boat, car, or other place or building, or any person, and for that end may cause any apartment, chest, box, locker, barrel, crate, or other place of concealment to be broken open and the contents examined, and if any quail, grouse or partridge, or rabbit, trout or woodcock be found, to take the body of the person in whose custody they shall be found, before the justice of the peace who issued the warrant, to be held to answer to the penalties aforesaid; and in all prosecutions and proceeding under this act, it shall not be necessary to file any state of demand, or to comply with the formalities required in penal actions, and in all such actions both parties may be sworn.

26. SEC. 7. Any person proving that the birds, fish or animals found in his or her possession during the prohibited periods, were killed, or taken in any place outside the limits of this state, and that the laws of such place did not prohibit such killing or taking, shall be exempt from the penalties of this act.

27. SEC. 8. Any penalty recovered under this act, when collected, shall be paid to the complainant (when not otherwise directed by this act), and on the non-payment of any penalty, the defendant shall be committed to the common jail of the county for a period of not less than ten days; and at the rate of one day in addition for each dollar of the judgment over ten dollars in amount, and it shall be lawful for any freeholder, upon view of any violation of any of the provisions of this act, to arrest any person or persons guilty thereof, without warrant, and take the offender or offenders before some justice of the peace, to be dealt with as law and justice may require, and shall be clothed with the same power, and may exact the same assistance as if he was constable.

SEC. 9. All acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby repealed.

A further Supplement. Approved March 27, 1867.

28. SEC. 1. That the provisions of the fifth section of the supplement to the act approved March twenty-sixth, anno domini, eighteen hundred and sixty-six, to which this is a further supplement, be, and they are hereby extended so as to include all persons who shall fish, with hook and line, for any kind of fish whatsoever, on the Sabbath day, except those mentioned in the said section of said supplement, and that all persons so fishing on the Sabbath day shall be subject to the same fines and penalties, and shall be recovered in the same manner as in said supplement stated.

#### NOTE.

A justice has no right to arrest a person for carrying a gun on another's land; the owner or possessor may, if he is not resident in the state, and take him before a magistrate, but he has no right to tie him merely to prevent his escape. 2 Vroom, 45.